



NEW YORK  
CITY BAR

**COMMITTEE ON AERONAUTICS NEWSLETTER**

Volume 3, No. 1, Winter 2018

ALAN D. REITZFELD  
**CHAIR**  
areitzfeld@gmail.com

SARAH G. PASSERI  
**SECRETARY**  
sarah.passeri@hklaw.com

**IN THIS ISSUE:**

From the Committee Chair and Committee Secretary .....	2
Subcommittee List .....	3
<b>Articles</b>	
Daniel G. Agius, <i>The Fate of the Aviation Empowerment Act</i> .....	4
Daniel G. Agius, <i>PTAB Wastes Aircraft Lav Patent</i> .....	5
Maria C. Iannini, <i>Initial Report of the Subcommittee on ICAO Developments</i> .....	7
Christopher B. Kende, <i>Federal Judge in San Francisco Dismisses Class Action Claims as Time Barred and Pre-Empted by the Airline Deregulation Act</i> .....	8
Bradford P. Meisel, <i>Congress Criminalizes Drone Operation Near Airports</i> .....	10
Michael P. Peck, <i>A Rose by Any Other Name: Airport Names and Criminal Connections</i> .....	12
Albert J. Pucciarelli, <i>CRM = Teamwork</i> .....	16
Racquel H. Reinstein, <i>So You Want to Build A Runway</i> .....	19
Rebecca Tingey and Andreia Moura, <i>The Risks of Using In-flight WiFi</i> .....	23
<b>Fun Pages</b> .....	24

*The views and opinions expressed in these articles are those of the authors and do not necessarily reflect the views of the New York City Bar Association.*

## Congress Criminalizes Drone Operation Near Airports

Bradford P. Meisel<sup>1</sup>  
Bpm50@georgetown.edu



On October 5, 2018, President Donald Trump signed the FAA Reauthorization Act of 2018. The law, which passed the Senate by a 93-6 vote, includes the Drone Operator Safety Act, which makes it a federal crime to operate a drone in any manner that interferes with a manned aircraft, including operating a drone in an airport's runway exclusion zone.<sup>2</sup>

The Drone Operator Safety Act was introduced by Senator Sheldon Whitehouse (D-RI) and Representative Jim Langevin (D-RI) in response to several publicized incidents, in which drones nearly collided with commercial passenger aircraft during takeoff or landing. The act imposes stiff penalties on violators who now face up to one year in prison or up to life in prison if they cause or intend to cause serious injury or death.<sup>3</sup>

Since operating a drone in a runway exclusion zone is now a federal crime, the FBI will likely join the FAA and NTSB in investigating aviation incidents and accidents at or near airports if a drone is involved or suspected of being involved.

A violator can only escape criminal liability by demonstrating that the drone entered the runway exclusion zone due to a technical malfunction beyond the operator's control.<sup>4</sup> Therefore, many prosecutions for violations of the act will likely hinge on expert testimony regarding whether or not such a malfunction occurred.

Since operating a drone in a runway exclusion zone is now a federal crime and the statute was enacted to prevent collisions between drones and manned aircraft, operators of drones that collide with manned aircraft in runway exclusion zones will almost certainly be held to a negligence per se standard in tort lawsuits. Insurance companies that offer drone insurance can minimize their exposure in such cases by including provisions in policies prohibiting insured

---

<sup>1</sup> Bradford P. Meisel earned his J.D. from Georgetown University Law Center in May of 2018 and will be joining the New York City office of McElroy, Deutsch, Mulvaney & Carpenter, LLP after completing a clerkship with New Jersey Superior Court Judge Diane Pincus in September of 2019. Mr. Meisel analyzed drone, autonomous vehicle, and cybersecurity law and policy during his time as a law clerk for U.S. Senators Sheldon Whitehouse (D-RI) and Gary Peters (D-MI) and the U.S. Department of Justice and has logged numerous hours as a student pilot.

<sup>2</sup> FAA Reauthorization Act of 2018, P.L. 115-254, 115th Cong. (2018).

<sup>3</sup> Press Release, Office of Senator Sheldon Whitehouse, Langevin and Whitehouse Introduce Bill to Protect Aircraft from Drones, (Aug. 4, 2017), accessible at, <https://www.whitehouse.senate.gov/news/release/langevin-whitehouse-introduce-bill-to-protect-aircraft-from-drones>.

<sup>4</sup> *Id.*

parties from operating drones in violation of the statute and disclaiming coverage for any claims stemming from such violations.

The FAA Reauthorization Act also includes a provision known as the Preventing Emerging Threats Act introduced by Sen. Ron Johnson (R-WI). The statute gives any federal agency under the auspices of the Departments of Justice (DOJ) or Homeland Security (DHS)—such as the TSA, FBI, or Secret Service—the authority to shoot down, intercept, or seize any drone without a warrant or military approval if it poses a threat to a facility or asset designated by DOJ or DHS in consultation with the Department of Transportation.<sup>5</sup> Therefore, the TSA, or another federal agency under the auspices of DOJ or DHS, could potentially designate all airports servicing commercial flights and shoot down any drone spotted in their runway exclusion zones.

---

---

<sup>5</sup> *Id.*